IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 2634 OF 2004

Samir Rana ...Petitioner

Versus

Ministry of Finance and Ors. ...
Respondents

Mr. P.M. Havnur for the Petitioner

Mr. Y.R. Mishra for Respondent Nos. 1 to 3

Ms. Shakuntala Joshi for Respondent No. 4

Ms. Mamta Sadh instructed by M/s. V. Deshpande & Co.
for Respondent No. 5.

CORAM: **DALVEER BHANDARI, C.J., &**
S.A. BOBDE, J.
DATE: FEBRUARY 9, 2005.

P.C.

The petitioner has filed this petition in public interest.

The petitioner is a Director of Tech-Movers Systems (India) Limited, and has filed this petition with the prayer that the Debts Recovery Tribunal be directed to frame proper guidelines / regulations setting out the qualifications which are required for being selected and appointed as the Court Receiver, and also prayed that the Tribunal be directed to form a panel of qualified Court Receiver. In this petition, he has also prayed that the Notification dated 3rd October, 2002 appointing respondent No. 3 as the sole Court Receiver be set aside.

Replies have been filed on behalf of respondent Nos.2, 4 & 5.

The Senior Manager of respondent No. 5, Bank of India, in his affidavit, has mentioned that the petitioner and other Directors of M/s. Techmovers Systems (India) Ltd. are indebted not only in their capacity as the Directors but also in their individual and personal capacity as the Guarantors to respondent No. 5 to the tune of Rs.1,09,50,049/- along with further interest (till payment and realisation), which is in the form of public money and, therefore, the petitioner is

estopped from representing himself that the petition is filed in the interest of public. According to respondent No.5, in the garb of public interest litigation, the entire effort of the petitioner is to avoid payment of outstanding dues to the respondent. The Registrars of Debts Recovery Tribunal have also reiterated the same thing that for avoiding payment of the outstanding amount, this petition has been filed, which is an abuse of the process of Court. It is further incorporated in the affidavit of respondent No. 5 that this petition has been filed maliciously with a dishonest intention just to cause hindrance in the execution proceedings initiated by respondent No. 5 for recovery of the aforesaid dues, which was duly contested by the petitioner. It is also stated that the petitioner has suppressed that despite giving his express consent for the sale of the mortgaged securities, attempted to delay the execution and sale of the mortgaged / foreclosed securities and even despite the order of Debts Recovery Tribunal No. II, proceeded to create third party interest in respect of the mortgaged securities on the basis of false and concocted documents, and thus, the petitioner is not entitled to seek any equity from this Court, as the present petition is nothing but a fresh attempt to restrain respondent No. 5 from enforcing their mortgaged

securities. It is also incorporated that respondent No. 5 has filed Recovery Application, being Original Application No. 299 of 2002, for the recovery of a sum of Rs.1,13,18,043/- for the enforcement of the mortgaged securities.

We have heard the learned counsel for the parties.

We are of the considered view that this petition has been filed with an oblique motive to somehow defer the payment of the outstanding dues. The petitioner has not approached this Court with clean hands, and is not entitled to any relief in our extra-ordinary jurisdiction under Article 226 of the Constitution.

This petition deserves to be dismissed. Order accordingly.

CHIEF JUSTICE

S.A. BOBDE, J.